

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO.: 04-12098

GREGORY F. SANKEY,)
Plaintiff)
)
v.)
)
THE SHAW GROUP, INC. and)
STONE & WEBSTER, INC.,)
Defendants)

**DEFENDANTS'
MOTION TO DISMISS
COUNT 12
PURSUANT TO RULE 12(b)(6)**

The Defendants, Stone & Webster, Inc. ("S&W") and The Shaw Group, Inc. (collectively with S&W, the "Defendants"), by and through their attorneys Nelson, Kinder, Mosseau & Saturley, P.C., hereby move to dismiss Count 12 (Violation of M.G.L.c. 93A) of the Plaintiff, Gregory F. Sankey's ("Sankey") Amended Complaint pursuant to Fed.R.Civ.P. 12(b)(6), as Count 12 fails to state claims upon which relief may be granted.

**COUNT 12 OF THE AMENDED COMPLAINT
FAILS TO STATE CLAIMS UPON WHICH RELIEF MAY BE GRANTED**

Sankey filed an Amended Complaint (the "Complaint") against S&W and Shaw containing 12 counts for relief, all arising from S&W's decision not to hire Sankey for a lucrative, vice-president's position. Count 12 of the Amended Complaint alleges that the Defendants violated M.G.L.c. 93A through their conduct during the hiring process. Massachusetts courts have consistently held that M.G.L.c. 93A does not apply to employment-related claims. As such, and as more fully discussed in the attached

memorandum of law, Count 12 of the Amended Complaint fails to state a claim upon which relief may be granted and should be dismissed as a matter of law.

WHEREFORE, the Defendants, Stone & Webster, Inc. and The Shaw Group, Inc. respectfully request that this Court:

- A. Dismiss Count 12 of the plaintiff's Amended Complaint;
- B. Award attorneys' fees and costs; and
- C. Order such other relief as this Court deems just and proper.

Respectfully submitted,

THE SHAW GROUP, INC. and STONE &
WEBSTER, INC.

By its attorneys:



Richard C. Nelson, Esquire (BBO # 653790)
Kenneth E. Rubinstein, Esquire (BBO # 641226)
Nelson, Kinder, Mosseau & Saturley, P.C.
99 Middle Street
Manchester, NH 03101
(603) 647-1800

CERTIFICATE OF COMPLIANCE WITH LOCAL RULE 7.1(A)(2)

I, Kenneth E. Rubinstein, certify that prior to filing this Motion, I conferred with counsel for the plaintiff in good faith to resolve or narrow the issue presented herein.


Kenneth E. Rubinstein

CERTIFICATE OF SERVICE

I, Kenneth E. Rubinstein, Esquire, hereby certify that the foregoing Defendants' Motion to Dismiss Count 12 Pursuant to Rule 12(b)(6) was this day forwarded to Anthony R. Bott, Esquire, 8 Beach Road, P.O. Box 1137, East Orleans, Massachusetts 02643, Counsel for Gregory Sankey.

Dated: January 5, 2005

By: 
Kenneth E. Rubinstein